

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:18-cv-00551-MOC-DCK

PATRICIA ROBERTS
ERNESTINE WASHINGTON
DAMMIONE MEYERS,

Plaintiffs,

Vs.

CHRISTOPHER BRYAN LANDIS
AMY SHOE CLAY
CATAMOUNT MARKETING GROUP, INC.
KAREN B. LANDIS
CONCELIUM, LLC
MICHAEL S. LANDIS,

Defendants.

ORDER

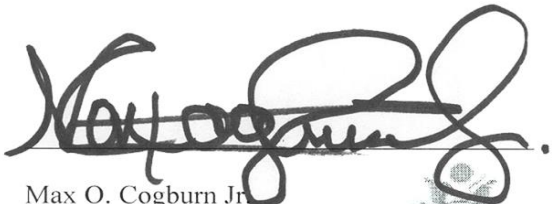
THIS MATTER is before the Court on defendant's partial Motion to Dismiss under Rules 12(b)(6) and 9(b), Fed.R.Civ.P. Having considered defendant's partial motion and reviewed the pleadings -- including the plaintiffs' Response and defendants' Reply -- the Court is not yet convinced that plaintiffs have failed to state a claim or that their claims of fraud are insufficient under Rule 9(b). While the Court notes as did defendants in their Reply that plaintiff did not respond to the statute of limitations arguments, "[o]nly in 'rare circumstances is it possible to decide a statute of limitations defense on a Rule 12(b)(6) motion to dismiss. *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007)." C.L. Ritter Lumber Co., Inc. v. Consolidation Coal Co., 1:11CV00019, 2011 WL 4963195, at *1 (W.D. Va. Oct. 19, 2011). The Court will, therefore, deny the instant partial Motion to Dismiss without prejudice as to reasserting the substance in the form of a Motion for Summary Judgment at the close of discovery.

ORDER

IT IS, THEREFORE, ORDERED that defendant's partial Motion to Dismiss under Rules 12(b)(6) and 9(b), Fed.R.Civ.P. (#17) is **DENIED** without prejudice as to reasserting the substance of the motion at the close of discovery by way of Motion for Summary Judgment.

Defendants are allowed 14 days within which to file their Answer.

Signed: March 4, 2019



Max O. Cogburn Jr.
United States District Judge